

D.J.H. asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Lima's dismissal of Mr. H.'s complaint against QK, Inc., in which Mr. H. alleges that QK engaged in employment discrimination in violation of the Utah Antidiscrimination Act (Title 34A, Chapter 5, Utah Code Annotated; also referred to as "the Act" hereafter).

The Appeals Board exercises jurisdiction in this matter pursuant to Utah Code Annotated §63-46b-12 and §34A-5-107(11).

### **BACKGROUND AND ISSUES PRESENTED**

Mr. H. filed a complaint with the Utah Antidiscrimination & Labor Division ("UALD") alleging that QK had unlawfully discriminated against him. After investigating Mr. H.'s complaint, UALD found no reasonable cause to believe that QK had engaged in unlawful discrimination.

As permitted by § 34A-5-107(4) of the Act, Mr. H. then filed a request for a *de novo* hearing on his complaint. Judge Hann was designated as presiding officer and the complaint was scheduled for a two-day hearing to begin on October 19, 2004. Notice of this hearing was sent to Mr. H. on May 28, 2004. Thereafter, Judge Hann resigned from the Commission and Judge Lima assumed responsibility for the adjudication of Mr. H.'s complaint.

On October 13, 2004, Mr. H. requested a continuance of the hearing. Mr. H. gave three reasons for his request: 1) Judge Hann had originally stated that the hearing would begin on October 18, 2004, rather than October 19, 2004; 2) Judge Lima had not had the opportunity to familiarize herself with the record; and 3) Mr. H.'s "recent employment requirements preclude participation" on October 20, 2004, which was to be the second day of the hearing.

Judge Lima denied Mr. H.'s request for a continuance. Then, after Mr. H. failed to appear for the hearing on October 19, 2004, Judge Lima entered his default, dismissed his complaint, and awarded attorneys fees and costs to QK, Inc.

Now, in requesting Appeals Board review of Judge Lima's decision, Mr. H. argues only one point—that Judge Hann stated the hearing would begin on October 18, 2004, but scheduled the hearing to begin on October 19, 2004.

### **DISCUSSION AND CONCLUSION OF LAW**

Even if the Appeals Board were to accept Mr. H.'s assertion that Judge Hann originally advised the parties that the hearing would begin on October 18, 2004, the Notice of Hearing mailed to Mr. H. on May 28, 2004, clearly states that the hearing was to commence on October 19, 2004.

**ORDER DENYING MOTION FOR REVIEW**

**David J. H.**

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Consequently, as of the end of May 2004, Mr. H. was on notice of the correct hearing date. Although Mr. H. contends he had an employment-related conflict that precluded his attendance at hearing on October 20, 2004, the second day of the hearing, he has not explained or substantiated that conflict. Nor has he explained why he did not appear for the first day of the hearing, on October 19, 2004.

In light of Mr. H.'s failure to make a timely request for continuance or to establish that any continuance was necessary, the Appeals Board concurs with Judge Lima's dismissal of Mr. H.'s complaint.

**ORDER**

The Appeals Board affirms Judge Lima's decision and denies Mr. H.'s motion for review. It is so ordered.

Dated this 20<sup>th</sup> day of January, 2006.

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Colleen S. Colton, Chair

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Patricia S. Drawe

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Joseph E. Hatch